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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,511	08/26/2003	Kotaro Kaneko	011350-321	2710
21839	7590	11/07/2006	EXAMINER	
BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			PAN, JOSEPH T	
			ART UNIT	PAPER NUMBER
			2135	

DATE MAILED: 11/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,511

Applicant(s)

KANEKO, KOTARO

Examiner

Joseph Pan

Art Unit

2135

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/11/06&8/26/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Referring to claim 1:

Claim 1 recites "A computer program for a controlling apparatus, executing the procedures of: monitoring a frequency of communications from said controlling apparatus to the outside; and detecting computer virus infection at the controlling apparatus by means of comparing the monitored frequency of communications with a preset threshold value." A computer program is merely a set of instructions capable of being executed by a computer, so the computer program itself is not a process. Therefore, a claim for a computer program, without the computer-readable medium needed to realize the computer program functionality, is treated as nonstatutory functional descriptive material. Therefore, claim 1 recites non-statutory subject matter.

Referring to claim 2-9:

Claims 2-9 depend on claim 1, therefore they are rejected with the same rationale applied against claim 1 above.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta et al. (U.S. Pub. No. 2003/0009699 A1), hereinafter "Gupta".

Referring to claim 1:

Gupta teaches:

A computer program for a controlling apparatus,
executing the procedures of:

monitoring a frequency of communications from said controlling apparatus to the outside (see page 12, paragraph [0149] of Gupta); and

detecting computer virus infection at the controlling apparatus by means of comparing the monitored frequency of communications with a preset threshold value (see page 12, paragraph [0149] of Gupta).

Referring to claims 2, 11:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the plurality of external devices (see page 13, paragraph [0161], last 3 lines of Gupta).

Referring to claims 3, 12:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the specific destination port (see page 8, paragraph [0103] of Gupta).

Referring to claims 4, 18:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the warning message (see page 4, paragraph [0055] of Gupta).

Referring to claims 5, 13:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the time interval (see page 6, paragraph [0077] of Gupta).

Referring to claims 6, 14:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses monitoring a number of packets that are associated with a specific destination port number (see page 8, paragraph [0103] of Gupta).

Referring to claims 7, 15:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the connection request packet (see page 8, paragraph [0103], TCP SYN packet, of Gupta).

Referring to claim 8:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the controlling apparatus (see e.g. figure 1, element 27-0 of Gupta).

Referring to claim 9, 17:

Gupta discloses the claimed subject matter: a computer program for a controlling apparatus (see claim 1 above). Gupta further discloses the image forming apparatus (see figure 14, element 122 'printer' of Gupta).

Referring to claims 10, 19:

Gupta teaches:

A controlling apparatus comprising:

a monitor for monitoring a frequency of communications from said controlling apparatus to the outside (see page 12, paragraph [0149] of Gupta); and

a detector for detecting computer virus infection at said controlling apparatus by means of comparing the monitored frequency of communications with a preset threshold value (see page 12, paragraph [0149] of Gupta).

Referring to claim 16:

Gupta discloses the claimed subject matter: a controlling apparatus (see claim 10 above). Gupta further discloses the frequency of the connection request packet (see page 8, paragraph [0103], TCP SYN packet; and page 12, paragraph [0149], 'generate an alert when traffic exceeds a predetermined high water mark for a given zone, such as a single server, a sub-net, an enterprise network, and the like', of Gupta).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Pan whose telephone number is 571-272-5987.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached at 571-272-3859. The fax and phone numbers for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Joseph Pan


KIM VU
SUPERVISORY PATENT EXAMINER
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